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David Eigrarsh, Charlene Panos, Jeanette Rawls,
Jennifer Walker and Alex Zennaro and
the proposed CANCELLED MEMBER CLASS

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DONNA ZIZIAN, Individually and on behalf of all other similarly situated California Residents,

Plaintiff,

v.

**MASSAGE ENVY FRANCHISING,
LLC, a Delaware limited liability
company.**

Defendant.

Case No. 16-cv-00783-DMS-BGS

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: July 1, 2016
Time: 1:30 p.m.
Crtrm: 13A
Judge: Hon. Dana M. Sabraw

[Caption continues on next page.]

1 MICHELE BANDELL, DAVID
2 EIGLARSH, CHARLENE PANOS,
3 JEANETTE RAWLS, JENNIFER
WALKER, and ALEX ZENNARO,
4 individually and on behalf of all others
similarly situated,

Case No. 16-cv-01236-DMS-BGS

5 Plaintiffs,

6 v.

7 MASSAGE ENVY FRANCHISING,
LLC, a Delaware Limited Liability
Company,

8 Defendant.

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 1, 2016, at 1:30 p.m., in
 3 Courtroom 13A of the above-titled Court located at 333 West Broadway, San
 4 Diego, California, the Honorable Dana M. Sabraw presiding, Plaintiff Donna
 5 Zizian (“Zizian”) in the matter entitled *Donna Zizian, Individually and on behalf*
 6 *of all other similarly situated California Residents v. Massage Envy Franchising,*
 7 *LLC*, Case No. 3:16-cv-00783-DMS-BGS and Plaintiffs Michele Bandell
 8 (“Bandell”), David Eiglarsh (“Eiglarsh”), Charlene Panos (“Panos”), Jeannette
 9 Rawls (“Rawls”), Jennifer Walker (“Walker”), and Alex Zennaro (“Zennaro”) in
 10 the matter entitled *Michelle Bandell, David Eiglarsh, Charlene Panos, Jeanette*
 11 *Rawls, Jennifer Walker and Alex Zennaro, individually and on behalf of all*
 12 *others similarly situated v. Massage Envy Franchising, LLC, a Delaware Limited*
 13 *Liability Company*, Case No. 3:16-cv-01236-DMS-BGS, which have been
 14 consolidated solely for purposes of settlement, will and hereby do move the
 15 Court, pursuant to Federal Rule of Civil Procedure 23, for an Order:

- 16 (a) Granting approval of the proposed Class Action SETTLEMENT
 entered into between the PARTIES;
- 17 (b) Provisionally certifying the ACTIVE MEMBER Class and
 CANCELLED MEMBER Class as defined in the SETTLEMENT;
- 18 (c) Appointing Plaintiff Zizian as Class Representative of the proposed
 ACTIVE MEMBER Class;
- 19 (d) Appointing Plaintiffs Bandell, Eiglarsh, Panos, Rawls, Walker, and
 Zennaro as Class Representatives of the proposed CANCELLED
 MEMBER Class;
- 20 (e) Appointing Frank Johnson and Brett Weaver of Johnson & Weaver,
 LLP as ACTIVE MEMBER CLASS COUNSEL;
- 21 (f) Appointing Joshua H. Eggnatz, Michael J. Pascucci, and Benjamin
 M. Lopatin of Eggnatz, Lopatin, Pascucci, LLP as CANCELLED
 MEMBER CLASS COUNSEL;

26 ¹ See Exhibit A to the Declaration of Brett M. Weaver, filed herewith. The
 27 capitalized terms herein have the same definitions as those terms in the
 SETTLEMENT.

- (g) Approving the PARTIES' proposed notice program, including the proposed forms of notice set forth in the SETTLEMENT, and directing that notice be disseminated pursuant to such program;
- (h) Appointing The Garden City Group, LLC ("Garden City Group") as SETTLEMENT ADMINISTRATOR, and directing Garden City Group to carry out the duties and responsibilities of the SETTLEMENT ADMINISTRATOR specified in the SETTLEMENT;
- (i) Staying all non-SETTLEMENT related proceedings in the ACTIONS and any other actions that may be filed asserting claims similar to those raised in the ACTIONS pending final approval of the SETTLEMENT;
- (j) Enjoining any members of the proposed classes from pursuing claims subject to the SETTLEMENT in any other judicial, administrative, arbitral or other forum pending a final determination regarding whether the SETTLEMENT should be approved; and
- (k) Setting a FINAL APPROVAL HEARING and certain other dates in connection with the final approval of the SETTLEMENT.

This motion is based on this notice of motion and motion, the accompanying memoranda of points and authorities, the Settlement, including all exhibits thereto, the accompanying Declarations of Brett M. Weaver, Luanne Sacks, and Joshua H. Eggnatz, the argument of counsel, all papers and records on file in the ACTIONS, and such other matters as the Court may consider.

Respectfully submitted,

Dated: June 3, 2016

JOHNSON & WEAVER, LLP

By: *s/Brett M. Weaver*
BRETT M. WEAVER

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Attorneys for Plaintiff Donna Zizian and the proposed ACTIVE MEMBER CLASS

1 Dated: June 3, 2016

EGGNATZ, LOPATIN & PASCUCCI, LLP

2 By: s/ Joshua H. Eggnatz
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9 Attorneys for Plaintiffs Michele Bandell, David
10 Eiglarsh, Charlene Panos, Jeannette Rawls,
Jennifer Walker, and Alex Zennaro and the
proposed CANCELLED MEMBER CLASS

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12 *Filer's Attestation: Pursuant to Section 2.f.4 of the ECF Administrative*
13 *Policies and Procedures Manual for the Southern District of California, Brett M.*
14 *Weaver hereby attests that concurrence in the filing of this document has been*
15 *obtained.*

PROOF OF SERVICE

I am employed in the County of San Diego. I am over the age of eighteen years and am not a party to the within entitled action. My business address is 600 West Broadway, Suite 1540, San Diego, CA 92101.

On June 3, 2016, I served a copy of the following document:

- 1) PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- 2) PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;**
- 3) DECLARATION OF JOSHUA H. EGGNATZ IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; and**
- 4) DECLARATION OF BRETT M. WEAVER IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

[BY ELECTRONIC ACCESS] I hereby certify that the foregoing documents were filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all parties on the electronic service list maintained for this case.

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed on June 3, 2016, at San Diego, California.

Bv: *s/Brett M. Weaver*
BRETT M. WEAVER